Federal Compunications Commission

Washington, D.C. 20554

OISTRADOCKET No. 92-136

In the Matter of

Amendment of Part 97 of the Commission's Rules to Relax Restrictions on the Scope of Permissible Communications in the Amateur Service. therefore, for amendment of Section 97.113 of the Commission's Rules, 47 C.F.R. § 97.113. The petitioners indicate this rule needs to be reviewed in light of contemporary communication demands and the operational capabilities of licensees in the amateur service. The petitioners argue that the prohibition against using the amateur service as an alternative to other authorized radio services, except as necessary for emergency communications, may unnecessarily restrict amateur operators from participating in many public service activities and from satisfying their personal communications requirements.

3. The current Section 97.113 is intended to help maintain the non-commercial character of the service by prohibiting certain types of transmissions by amateur stations.² We do not, however, want to inhibit amateur operators from using the service frequencies in the manner they believe best suited to their purposes. The objective of this proceeding, therefore, is to determine if the prohibitions in Section 97.113 should be relaxed, and, if so, how Section 97.113 should be revised to accommodate the uses of the service frequencies that amateur operators desire.

4. The League contends that restrictions on the content of amateur station transmissions should be based on the principle that any amateur-to-amateur communication is permitted unless specifically prohibited.3 The League, therefore, seeks to allow amateur stations to transmit occasionally certain types of communications that are now prohibited so that the amateur service community can better meet public service communications needs.4 The League states that its suggested amendment would not subject the service to exploitation because the self-regulating character of the service would provide the proper checks and balances.⁵ It also argues that each licensee can best determine for himself or herself whether a particular public service project, such as providing communications at spectator events, 6 is a reasonable use of the amateur service frequencies.⁷ The League also seeks to allow an amateur station control operator to accept compensation when using the station as part of classroom instruction at an educational institution.

5. Reynolds and Ruh ask that amateur stations be authorized to fill communications voids in other radio services. They suggest eliminating the prohibition on amateur stations retransmitting the broadcasts of stations in other radio services, such as government time and weather stations. They also request that amateur stations

NOTICE OF PROPOSED RULE MAKING

Adopted: June 18, 1992;

Released: July 2, 1992

RM-7849

RM-7895

RM-7896

Comment Date: October 1, 1992

Reply Comment Date: December 1, 1992

By the Commission:

I. INTRODUCTION

In this Notice of Proposed Rule Making (Notice), we propose to amend the rules for the amateur service by lessening restrictions on the scope of the permissible communications that amateur stations may transmit. This proceeding was initiated by two petitions and a letter requesting rule making relating to this issue.

II. DISCUSSION

2. The petitioners generally seek greater flexibility for amateur stations to transmit communications for public service projects and personal matters. They want to eliminate rules that bar amateur stations from transmitting occasionally messages that could indirectly facilitate the business or commercial affairs of some party and messages that could be transmitted in other radio services. They ask,

Petitions were received from Michael R. Reynolds (RM-7849), and Henry B. Ruh on behalf of Amateur Television Quarterly Magazine (RM-7896). The letter was received from the American Radio Relay League, Inc. (League). Because of the detail it contains, it is treated as a petition (RM-7895).

² Section 97.113 prohibits amateur stations from transmitting any communications the purpose of which is to facilitate the business or commercial affairs of any party. It prohibits amateur stations from transmitting communications as an alternative to other authorized radio services. It also prohibits the transmission of music; communications in connection with any activity that is contrary to law; encrypted messages; words, language or meaning that is obscene, indecent, or profane; and false or deceptive messages or signals. This rule provides, however, exceptions for providing emergency communications, facilitating the public's safe observation of public gatherings, selling amateur station apparatus, and conveying news information.

³ RM-7895 at 2.

⁴ Id. at 1.

⁵ Id. at 11.

⁶ Id. at 10.

¹d. at 10-11. The League's proposed revision is based upon the principles that (a) amateur operators should not conduct communications in exchange for compensation or for the benefit of their employers, (b) amateur operators should not transmit communications in which the operator has a pecuniary interest, and (c) amateur operators should not use amateur service frequencies regularly as a substitute for other licensed radio services. The yardstick the amateur operators would use for determining pecuniary interest would be the business implication of the licensee initiating the communication, not the recipient.

⁸ Id. (Attachment) at 1.

RM-7849 at 3 and RM-7896 at 1.

¹⁰ RM-7849 at 1, 3, and RM-7896 at 2. The League also proposes eliminating this prohibition. See RM-7895 at 14.

be allowed to retransmit music included in space shuttle communications. 11 Ruh further requests that amateur stations be allowed to retransmit video obtained from government and private radar stations. 12

6. Periodicals serving the amateur service community have indicated that there is already widespread use of amateur service frequencies by amateur operators to bolster governmental functions. These periodicals routinely commend and laud amateur operators for providing communications for police and fire departments, 13 and for reporting data to the National Weather Service.14 Correspondence from amateur operators also suggests that they want to communicate messages relating to their personal, business such as ordering goods and services. 15 Some commenters, however, oppose any change to Section 97.113. One group states that to relax the prohibited transmission rule would undermine the basic principle of noncommercial communications upon which the amateur service is founded and for which the frequencies are allocated. 16 Other commenters express the view that allowing any business-related communications on amateur service frequencies would be disruptive 17 and that any relaxation of the prohibited communication rule would mark the end of the amateur service.18

III. PROPOSAL

7. It appears clear from the petitions and comments discussed above that much of the amateur community strongly supports relaxing a number of the existing restrictions on the scope of amateur services communications. Further, it appears that the amateur community appreciates both the benefits and the burdens of relaxing these existing restrictions. The restrictions on permissible communications in the rules were designed to protect the essential character of the amateur service as a reservoir of volunteer communicators, technicians and electronics experts dedicated to advancing the radio art, to provide public service communications particularly in times of emergencies, and to enhance international goodwill. While eliminating some of the existing restrictions would provide the flexibility to expand public service activities and satisfy the personal communications interests, the potential for commercial exploitation and abuse of the amateur service's allocated frequencies could increase.

8. After careful consideration, we propose to relax the restrictions on the scope of permissible amateur communication. Specifically, we propose the revision suggested by the League. Our decision is based on the following factors. First, the League's suggested proposal appears to best consolidate the views of the amateur community. Second, relaxing the restriction on permissible communications would permit the amateur community to increase its public service activities. Third, as noted by the League, the amateur community has a long tradition of self-regulation

and a strong commitment to maintaining the unclouded distinction between the amateur service and other radio services.

9. The proposed rule amendments would expand the scope of public service communications and personal communications permitted in the amateur service More specifically, we propose to relax the prohibition against amateur stations transmitting any communications that could be furnished via other radio services, Our intent is to allow amateur operators who so desire to increase their public service activities in support of parades, races, and other public gatherings. We also propose to remove the outright bar on amateur stations transmitting communications that could facilitate the business affairs of any party. This change would allow amateur stations to transmit, for example, communications relating to amateur radio club business activities. Amateur stations could also transmit communications, such as ordering food, lodging, and transportation, that incidentally facilitated the commercial activities of some party. We further propose to permit control operators to accept compensation as an incident of a teaching position during periods of time when the station is used for classroom instruction. The general prohibition against amateur operators transmitting messages for hire or for material compensation, direct or indirect, however, would remain in the rules.

10. These proposals are not intended to alter in any way the nature and purpose of the amateur service. Rather, they are intended to give amateur operators more flexibility to serve the public as well as to enhance their personal communication capabilities. These proposed changes, however, also would increase the amateur community's responsibilities for selfregulation and cooperation in the use of their allocated frequencies. We request comments, therefore, on the proposed amendments to the Amateur Radio Services Rules set forth in the attached Appendix. We are not proposing to allow amateur stations to transmit music as suggested by Ruh. We believe this proposal could alter the nature and purpose of the service and is well beyond our goal of providing greater flexibility for amateur stations to transmit communications for public service gatherings and personal matters. Interested parties, however, may comment regarding whether transmission of music should be allowed.

IV. PROCEDURAL MATTERS

Ex Parte Rules - Non-Restricted Proceeding

11. This is a non-restricted notice and comment rule making proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206(a).

¹¹ RM-7849 at 2, RM-7896 at 2.

¹² RM-7896 at 1-2,

¹³ See The National Amateur Radio Association's The Amateur Radio Communicator, October, 1991, 18-20; comment of Gay James at 3, Worldradio January, 1992, 1, 3; QST February, 1992, 23; QST May, 1991, 14.

14 See The National Amateur Bedia Bedia Bedia Bedia Bedia Bedia Bedia Bedia B

¹⁴ See The National Amateur Radio Association's The Amateur Radio Communicator, November, 1991, 22-24, Worldradio, March, 1992, 26-27, QST, July, 1991, 69.

Letter from Mr. C. Murray Robinson to Chief, Personal

Radio Branch (September 10, 1991).

⁶ Comment of Hood County Amateur Radio Club at 2.

Comment of A. Prose Walker at 1, Comments of American Amateur Radio Council (AARC) at 5. The late filed AARC Comments were accompanied by a request for acceptance. We have accepted and considered AARC's Comments in the interest of developing as complete a record as possible on this issue.

¹⁸ Comment of Steve Lund at 1, Jon Book at 1, Southeast Louisiana Amateur Radio Club at 1.

Regulatory Flexibility Act

12. We certify that the Regulatory Flexibility Act of 1980 does not apply to this rule making proceeding because, if the proposed rule amendments are promulgated, there will not be any significant economic impact on small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. The amateur service may not be used to transmit business communications on a regular basis. See 47 C.F.R. § 97.113(a). The Secretary shall send a copy of this Notice of Proposed Rule Making, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 605(b) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. §§ 601-612 (1981).

Comment Dates

- 13. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments on or before October 1, 1992, and reply comments on or before December 1, 1992. To file formally in this proceeding, you must file an original and five copies of all comments, and reply comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. To file informally, you must file an original and one copy of your comments, provided only that the Docket Number is specified in the heading. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554, Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.
- 14. For further information, contact William T. Cross, Personal Radio Branch, Private Radio Bureau, (202) 632-4964.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy Secretary

APPENDIX

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for Part 97 would continue to read as follows:

Authority citation: 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 303. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. §§ 151-155, 301, 609, unless otherwise noted.

2. Section 97.113 would be revised to read as follows:

§ 97.113 Prohibited transmissions.

(a) No amateur station shall transmit:

- (1) Communications for hire or for material compensation, direct or indirect, paid or promised, except as otherwise provided in these rules;
- (2) Communications in which the station licensee or control operator have a pecuniary interest, including communications on behalf of an employer. Amateur operators may, however, notify other amateurs of the availability for sale or trade, of apparatus normally used in an amateur station, provided that such activity is not conducted on a regular basis:
- (3) Music: Communications intended to facilitate a criminal act; Messages in codes or ciphers intended to obscure the meaning thereof, except as otherwise provided herein; Obscene, indecent, or profane words or language; or false or deceptive messages, signals or identification;
- (4) Communications, on a regular basis, which could reasonably be furnished alternatively through other radio services.
 - (b) An amateur station shall not engage in any form of broadcasting, nor may an amateur station transmit one-way communications except as specifically provided in these rules; nor shall an amateur station engage in any activity related to program production or newsgathering for broadcasting purposes, except that communications directly related to the immediate safety of human life or the protection of property may be provided by amateur stations to broadcasters for dissemination to the public where no other means of communication is reasonably available before or at the time of the event.
 - (c) A control operator may accept compensation as an incident of a teaching position during periods of time when an amateur station is used by that teacher as a part of classroom instruction at an educational institution.
 - (d) The control operator of a club station may accept compensation for the periods of time when the station is transmitting telegraphy practice or information bulletins, provided that the station transmits such telegraphy practice and bulletins for at least 40 hours per week; schedules operations on at least six amateur service MF and HF bands using reasonable measures to maximize coverage; where the schedule of normal operating times and frequencies is published at least 30 days in advance of the actual transmissions; and where the control operator does not accept any direct or indirect compensation for any other service as a control operator.
 - (e) No station shall retransmit programs or signals emanating from any type of radio station other than an amateur station, except propagation and weather forecast information originating from United States Government stations, and communications originating on United States Government frequencies between a space shuttle and its associated Earth stations. Prior approval for such retransmissions must be obtained from the National Aeronautics and Space Administration. Such retransmissions must be for the exclusive use of amateur operators. Propagation, weather forecasts, and shuttle retransmissions may not be conducted on a regular basis, but only occasionally, as an incident of normal amateur radio communications.

(f) No amateur station, except in auxiliary, repeater or space operation, may automatically retransmit the radio signals of other amateur stations.